

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11	JAYSON WALKER,)	Civil No. 06-CV-2362-L(AJB)
12	Plaintiff,)	
13	v.)	ORDER DIRECTING PLAINTIFF
14	RYAN CREDIT SERVICE,)	TO FILE A MOTION FOR
15	Defendant.)	DEFAULT JUDGMENT
16	_____)	

17 On October 25, 2006, plaintiff filed the above-captioned action. In his complaint, plaintiff
18 contends defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*
19 Plaintiff served defendant on October 27, 2006. After service of process, plaintiff did nothing. On
20 April 27, 2007, the Court set an Order to Show Cause (“OSC”) hearing why this action should not
21 be dismissed for lack of prosecution under Civil Local Rule 41.1. Before the time set for hearing
22 on the OSC, plaintiff filed a request for entry of default. Default was entered on May 23, 2007.
23 Again, plaintiff took no action.

24 The Court then set another OSC for October 9, 2007. This time the OSC hearing why the
25 case should not be dismissed was set because plaintiff failed to move for default judgment within
26 thirty (30) days of the entry of default. *See* Civ. L.R. 55.1.

27 Plaintiff did not appear at the OSC hearing. Plaintiff neither contacted the Court nor filed
28 a motion for default judgment prior to the OSC hearing. On October 9, 2007, the day the OSC

1 hearing was scheduled, plaintiff filed the "Declaration of Joshua B. Swigart ("Swigert") in response
2 to the Court's Order to show cause re: failure to move for default judgment.

3 In his declaration, Swigart contends that he "mistakenly calendared the hearing date for
4 October 11, 2007." (Declar. at 2). Swigart also asserts that he fully intended appearing at the OSC
5 hearing. *Id.* Swigert does not provide any reason, however, for his failure to file a motion for
6 default judgment. Nevertheless, the Court will provide plaintiff with a hearing date so that he may
7 file a motion for default judgment. **Counsel is advised that failure to file a motion for default**
8 **judgment within the time provided by the Court shall result in dismissal of this action without**
9 **prejudice.**

10 Based on the foregoing, **IT IS ORDERED** that plaintiff shall file and serve on opposing
11 counsel a motion for default judgment no later than October 29, 2007. Defendant may file an
12 opposition to the motion for default judgment no later than November 5, 2007. If defendant files
13 an opposition, plaintiff shall have until November 12, 2007 in which to file a reply memorandum.

14 **IT IS FURTHER ORDERED** setting hearing on the motion for default judgment for
15 November 19, 2007 at 10:30 a.m.

16 **IT IS SO ORDERED.**

17 DATED: October 15, 2007

18 
19 M. James Lorenz
20 United States District Court Judge

21 COPY TO:

22 HON. ANTHONY J. BATTAGLIA
23 UNITED STATES MAGISTRATE JUDGE

24 ALL PARTIES/COUNSEL
25
26
27
28